

Before the  
Postal Rate Commission  
Washington, D.C. 20268-0001

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U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

Postal Rate and Fee Changes, 2001 )

Docket No. R2001-1

INITIAL BRIEF OF THE OFFICE  
OF THE CONSUMER ADVOCATE

Shelley S. Dreifuss, Acting Director  
Kenneth E. Richardson, Attorney  
1333 H Street, N.W.  
Washington, D.C. 20268-0001  
(202)789-6830  
Fax: (202)789-6819

March 4, 2002

## INITIAL BRIEF OF THE OFFICE OF THE CONSUMER ADVOCATE

### I. STATEMENT OF POSITION

The Office of the Consumer Advocate (OCA) signed the Stipulation and Agreement soon after the version filed with the Commission on December 26, 2001 was circulated to the Docket No. R2001-1 participants. As a signatory, OCA supports the Stipulation and Agreement and respectfully recommends to the Commission that the rates and classifications contained in the Agreement be approved and recommended to the Governors of the Postal Service.

Chairman Omas' leadership is largely responsible for an outcome that surprised most postal observers – that it is possible for a diverse roster of participants to be drawn by a groundswell of support into an agreement for an early infusion of revenue into the Postal Service. At the October 25, 2001 hearing, Chairman Omas voiced a concern that many participants were discussing unofficially, i.e., whether postal finances would be impaired by the acts of terrorism unleashed in September and October of 2001. All participants were aware that postal expenses might be higher than original estimates because of the closing of two important postal facilities and the implementation of new arrangements for processing the mail of those facilities, not to mention the possibility of costly measures to protect postal workers and the public against anthrax infection carried by mail. Of even greater concern was that mail volumes and revenues might take a sharp turn downward, making it difficult for remaining volume to cover the Postal Service's fixed expenses.

The Chairman was frank in alerting the participants that the Commission might allow revisions to the Postal Service's initial rate request.<sup>1</sup> OCA, and likely most of the other participants, were keenly aware that any revisions to the initial rate proposals would probably be upward, but how far upward was hard to predict.

In light of this possibility, OCA eventually came to hold the view that the interests of the public would be best served by supporting the Stipulation and Agreement. OCA would be remiss if it did not give the lion's share of credit for bringing about this settlement to Dan Foucheaux, the Postal Service's Chief Counsel for Ratemaking. Mr. Foucheaux was assiduous in keeping the participants well informed about settlement meetings and any revisions to the Stipulation and Agreement. He was flexible and willing to listen to the concerns and wishes of the participants, although, naturally, not able to act favorably on all requests put to him. A recommended decision of the Commission based upon the Stipulation and Agreement thus would be achieved largely through the efforts of the chief actors, Chairman Omas and Dan Foucheaux.

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<sup>1</sup> Tr. 1/39.

## II. STANDARDS AND PRINCIPLES APPLICABLE TO THE COMMISSION'S REVIEW OF THE STIPULATION AND AGREEMENT

The Commission's standard for reviewing unopposed settlements has been consistently applied in past opinions. In those cases, the Commission has regularly explained that its review process for unopposed settlements includes both an independent review of the testimony and a determination that the requested change meets the policies of the Postal Reorganization Act:

Having made these determinations, the Commission has reviewed the evidentiary record pursuant to its statutory obligation under chapter 36 of title 39 of the U.S. Code. This includes an independent review of the testimony of Postal Service witness Koroma. This review leads to the conclusion that the record supports the proposed classification change set out in the settlement agreement, and that this change meets the policies of the Postal Reorganization Act, in particular, 39 USC § 3623(c)(2) and (5).<sup>2</sup>

And, similarly in another opinion,

Having made these determinations, the Commission has reviewed the evidentiary record pursuant to its statutory obligation under chapter 36 of title 39 of the U.S. Code. This includes an independent review of the testimony of Postal Service witnesses Adra and Eggleston. This review leads to the conclusion that the proposed classification change, as set out in the July 30, 1999 Stipulation and Agreement, meets the criteria of 39 U.S.C. § 3623 for the reasons cited by witness Adra, and conform to the policies of the Postal Reorganization Act.<sup>3</sup>

The Commission has followed this formula in other recent dockets. See, for instance, *Experimental Presorted Priority Mail Rate Categories*, "Opinion and Recommended Decision Approving Stipulation and Agreement," Docket No. MC2000-1,

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<sup>2</sup> *Ride-Along Experiment Extension*, "Opinion and Recommended Decision Approving Stipulation and Agreement," Docket No. MC2001-3, January 11, 2002 at 8.

<sup>3</sup> *Bulk Parcel Return Service Expedited Minor Classification Case*, "Opinion and Recommended Decision Approving Stipulation and Agreement," Docket No. MC99-4, August 19, 1999 at 12-13.

May 25, 2001 at 12 and *Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail*, “Opinion and Recommended Decision Approving Stipulation and Agreement,” Docket No. MC99-2, July 14, 1999 at 21. In each of those proceedings the Commission compiled an evidentiary record and reached findings that the proposal met the policies of the relevant sections of the Postal Reorganization Act.

This Commission’s practice of reviewing uncontested settlements for compliance with the policies of the enabling act apparently go further than those of the Federal Energy Regulatory Commission (FERC) which rules on many uncontested rate case settlements. This Commission, the PRC, undertakes an independent review of the testimony and the record to determine that the policies of the Postal Reorganization Act are met. On the other hand, at the FERC, the settlement rules and regulations (specifically, 18 C.F.R. §385.602) provide that the FERC may approve an uncontested settlement if the settlement is “fair and reasonable” and in the “public interest” without a determination on the merits that the rates meet the statutory standard of “just and reasonable.” 18 C.F.R. 385.602(g)(3).

Although, at the FERC, contested issues may be severed for decision, a contested settlement may be certified to the full Commission where, *inter alia*, the record contains “substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.” 18 C.F.R. 385.602(h)(2)(iii)(B). See *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 208 (D.C. Cir. 1984).

Similarly, the record in this proceeding contains sufficient evidence on which to base a recommended decision on the merits of the contested issue. An opportunity for

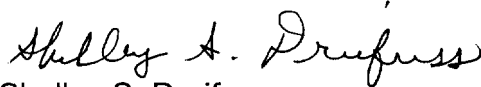
a full hearing has been afforded to the American Postal Workers Union (APWU), the objecting party. An opportunity has also been provided for others to rebut APWU's case. Evidentiary hearings were held on February 14, 2002 to present APWU's evidence from witness Riley in opposition to the proposed Stipulation and Agreement. That was followed by a hearing on six pieces of surrebuttal evidence presented by five witnesses on February 26, 2002.<sup>4</sup> Consequently, APWU, as well as those participants opposed to APWU's position, have had full opportunity to present their views through an on-the-record hearing. The Commission is now in a position both to decide the

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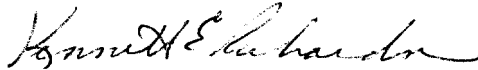
<sup>4</sup> Hearings were held pursuant to the Presiding Officer's Ruling No. R2001-1/43, "Presiding Officer's Ruling Establishing the Procedural Schedule for Consideration of the Proposed Stipulation and Agreement," January 31, 2002.

uncontested portion of the Stipulation and Agreement and the contested issue based on a full evidentiary record and to submit its final recommendation to the Governors.

Respectfully submitted,



Shelley S. Dreifuss  
Acting Director, Office of the Consumer Advocate

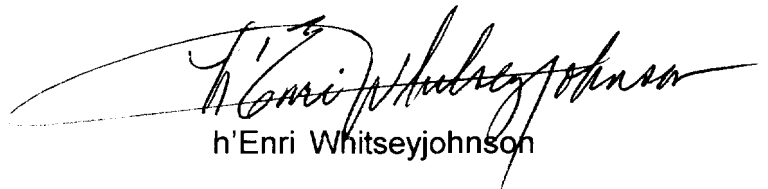


Kenneth E. Richardson  
Attorney

1333 H Street, N.W.  
Washington, D.C. 20268-0001  
(202) 789-6830; FAX (202) 789-6819

#### CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Rule 12 of the rules of practice.

  
h'Enri Whitseyjohnson

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March 4, 2002